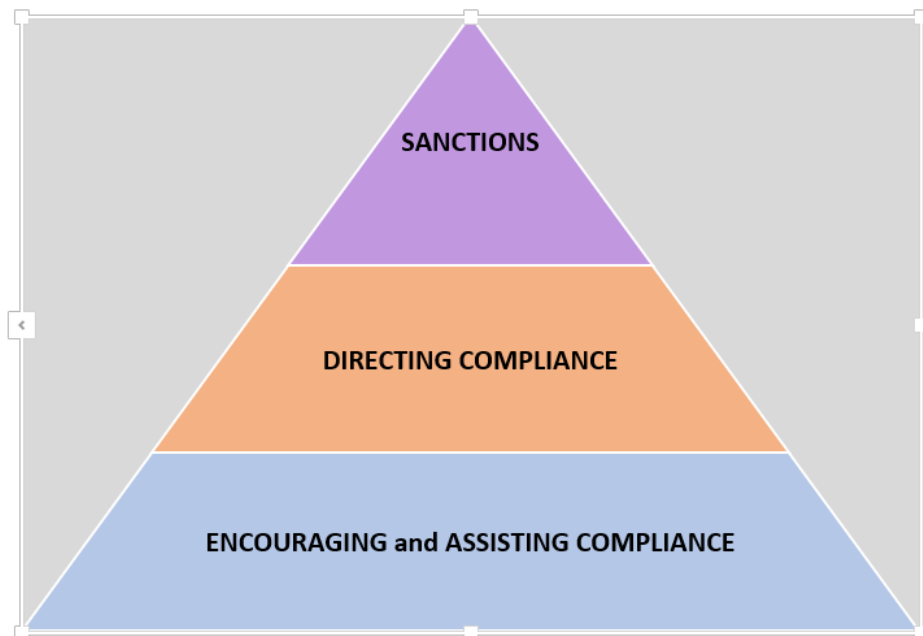


Water Licensing Compliance Framework



The Department for Environment and Water (the department) works to protect, manage and improve the health of South Australia's water resources including prescribed and non-prescribed surface water, groundwater and watercourses. The department performs a range of regulatory and compliance functions in accordance with legislation, policies and subordinate plans to achieve these outcomes.

The department utilises a Water Licensing Compliance Framework to ensure that breaches related to water under the *Landscape South Australia Act 2019* (the Act) are addressed in a consistent way. The compliance pyramid below illustrates the three levels of the compliance and enforcement response the department applies to maximise compliance with regulatory obligations.



Once a breach has been identified, a number of 'risk based' factors must be considered to determine the appropriate action to take, which are outlined in the 'Water Compliance Discretionary Factors' figure at the end of this document.

Most compliance action is designed to encourage and support compliance. Where necessary, the department directs compliance through verbal and/or written notices. Where appropriate, sanctions for non-compliance are applied. Compliance action is not always taken in a staged way (that is, moving progressively up the pyramid, starting at the base). There may be occasions where a sanction for a first offence is warranted.

Encouraging and assisting compliance

Where possible and appropriate, the department encourages and supports water users to comply and work together to prevent and manage water-related breaches. Water users might receive any or all of the following from the department:

- Letters, emails, phone calls or SMS' to remind water users of their obligations.
- Education or warning letters containing the information water users need to either prevent or fix breaches.
- Site visits to inspect the site, either to investigate a possible breach or to help water users understand their obligations as licence holders.

Directing compliance

Where a breach persists despite efforts to encourage and assist compliance, and where appropriate, the department may formally direct a water user to comply. In instances of a more serious breach or a repeated breach, the department may go straight to a formal direction. This may include:

- a direction letter
- a protection order, which prevents water users from taking action that will breach licence conditions
- a reparation order, which directs water users to repair a well, meter or other water infrastructure
- notices for remedial work to fix an issue.

Where remediation action or other works are required and it has not been completed by the water user, the department may arrange for the remediation action or works required and will seek to recover the costs from the water user.

Sanctions

If a water user remains in breach after the department has made contact with them, and/or where appropriate, a sanction may be imposed in response to the breach.

Sanctions include:

- formal cautions, which caution against further non-compliance or more serious actions will apply
- expiation fees (fines)
- prosecution action, which may result in court ordered penalties
- suspension, variation or cancellation of authorisations or permissions. This can include suspension or cancellation of a water licence or right to take water.

It is also important to be aware that sanctions will apply in the following instances:

- mandatory administrative penalty charges apply for all water taken in excess of allocation or without authorisation/water licence (see 'mandatory penalties below'); and
- expiations (fines) apply if meter reads are not submitted on time (as outlined in the conditions of a water licence/approval) under section 104(7) of the Act.

Mandatory penalties

Mandatory financial penalties are a key component of South Australia's compliance framework and are imposed in all cases where water is taken in excess of allocation, or without a water licence/authorisation (pursuant to section 88 of the Act), where a penalty rate applies. Penalty rates are calculated for each prescribed area in accordance with a procedure that takes into account the market value of water and the volume of water taken in excess of allocation/authorisation. These rates apply for every kilolitre taken without authorisation, as calculated at the end of an accounting period, and are intended to deter the illegal take of water by ensuring penalty rates are set at a value that is considerably greater than the cost of purchasing water on the market.

These penalties are a mandatory, minimum compliance response to overuse or unauthorised use of water. In instances of repeated or significant offences, additional sanctions may also be imposed for the same breach.

More information about the current rates, and links to the gazette notice in which rates are published, are viewable [here](#).

Water Compliance Discretionary Factors

Principles

- The main purpose of compliance and enforcement for the Department of Environment and Water's Water Licensing Branch is to obtain compliance and change behaviour.
- Consequently, the most significant considerations when determining what course of action to take when facing a breach are the consequences/impact of the breach that is occurring or has occurred and the likelihood that the offender will come into compliance. It is also important to think beyond the immediate incident or event and look for improvement within the organisation or with an individual.
- Our role is to protect the resource, not to make a moral judgement about a person's gain. A court may take this into consideration when assigning a penalty

Discretionary Factors

